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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/202,336	12/14/1998	ERLAND WITTKOTTER	HPB-7	2766

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EXAMINER

HUSEMAN, MARIANNE

ART UNIT

PAPER NUMBER

2161

DATE MAILED: 03/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

*[Signature]*

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/202,336	WITTKOTTER, ERLAND	
	Examiner	Art Unit	
	Marianne Huseman	2161	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.

- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.

- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.

- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 14 January 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1 and 3 - 18 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1 and 3 - 18 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on 14 January 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### *Response to Amendment*

#### *Drawings*

1. The corrected or substitute drawings were received on 1/14/2002. These drawings are acceptable. However, please see paragraph 3 below.

#### *Status of Claims*

2. Claim 2 has been cancelled and claims 1 and 3 – 18 have been amended and remain pending. A new art rejection of claims 1 and 3 – 18 are below.

#### *Specification*

3. The amendment filed 1/14/2002 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the term "code" has been changed to "key". The examiner believes that the term "key" is different from the term "code", therefore the change from "code" to "key" is considered improper. This also applies to Applicant's corrected drawings.

Applicant is required to cancel the new matter in the reply to this Office Action.

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 5 and 12 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Data gaps are somewhat disclosed on pages 33 – 36 (approximately), however, it is not clear as to how the claim language is supported by that description. There appears to be no disclosure specifying how what is claimed is being performed, i.e., it is not clear as to where, in the specification, there is a description regarding "volume data" or information as to how the "data gaps can be directly closed by the additional protection data" or how "filling up the data gaps" is performed/achieved?

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 5, 12, 14 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 5, line 5, it is not clear as to what is meant by "the data gaps can be directly closed..." [emphasis added].

In claim 12, line 3, it is not clear as to what is meant by "the gaps are filled up..." .

In claim 14, line 4, there is no proper antecedent basis for "the data source".

Perhaps the term -- external -- should be inserted before "data".

In claim 15, line 3, it is not clear as to what is meant by "agreeing on a code..."; i.e., which means/elements or operators/users are "agreeing"?

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

9. Claims 1, 3, 4, 6 – 11 and 13 - 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Blatter et al '873.

Regarding all of the above claims:

Blatter et al teach a data storage and decoding means, figure 1, such that Applicant's local computer system reads on element 25 and column 3, lines 44 - 49, Applicant's external data source reads on element 130, Applicant's local data storage

means reads on elements 95, 90 and 105 and column 4, lines 61 – 64, Applicant's linking means reads on elements 115 and 110 and 70, Applicants' protection data reads on the encryption keys of smart card, element 130, Applicant's storing in a non-reconstructed form reads on the PIDs and column 4, lines 41 – 55 and Applicants' non-linearity of the data storage means reads on column 14, lines 41 – 49.

Regarding particularly claims 3 and 10:

Applicant's operational instructions read on column 5, lines 19 – 26.

Regarding claim 4:

Applicant's storage means reads on column 6, lines 34 – 43.

Regarding claims 6 and 17:

The language of Applicant's claim 6 reads on the smart card, element 130 and an inherent smart card reader (interface).

Regarding claims 7 and 13:

Applicant's identification and billing data read on Blatter et al's entitlement data of smart card, element 130.

Regarding claim 8:

Applicant's control module reads on element 125.

Regarding claim 9:

Applicant's step of ensuring reads on the encryption of the programs disclosed in

Blatter et al.

Regarding claims 14 and 15:

Applicant's step of encoding reads on the keys of element 130, Applicant's step of transmitting reads on an inherent smart card reader/interface and Applicant's step of decoding reads on elements 115 and 33.

Regarding claim 16:

Applicant's plurality of document units reads on Blatter et al's plurality of video programs.

Regarding claim 18:

Applicant's data reads on column 3, lines 43 – 49 and column 9, lines 59 – 62.

***Claim Rejections - 35 USC § 103***

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

11. Claims 5 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blatter et al '873.

Blatter et al teach that their program (encrypted) contains gaps wherein CPSI (Condensed program specific information), used for mapping data, can be placed, columns 13 and 14, lines 34 – 42 and lines 7 – 20, respectively. This information is used in conjunction with the smart card to de-map the data stored in the storage devices. Therefore, it is considered that it would have been obvious to one of ordinary skill in the art at the time of the invention to receive this information to fill the gaps via a smart card (as this claim is interpreted as performing by the Examiner) rather than by the system, element 25, of Blatter et al., e.g., if the smart card is a "store owned" smart card and all of the data of the videos (programs) received is certain to be arranged the same way. Please see paragraphs 5 and 7, above.

***Response to Arguments***

12. Applicant's arguments with respect to all of the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marianne Huseman whose telephone number is 703-605-4277. The examiner can normally be reached on Monday - Friday, 6:30 AM - 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 703-305-9768. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Art Unit: 2161

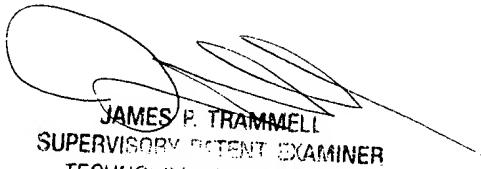
Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-9700.



Marianne Huseman  
Examiner  
Art Unit 2161

mh

February 28, 2002



JAMES P. TRAMMELL  
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